

SENATE BILL REPORT

ESSB 5536

As Passed Senate, March 11, 2003

Title: An act relating to condominiums.

Brief Description: Resolving claims relating to condominium construction.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Finkbeiner, Reardon, Roach, Hale, Horn, Benton, Morton, Hewitt, Schmidt, Kastama, Sheahan, Mulliken, Johnson, Parlette, Stevens, West and Esser).

Brief History:

Committee Activity: Judiciary: 2/14/03, 2/20/03 [DPS].

Passed Senate: 3/11/03, 41-8.

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5536 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson and Kline.

Staff: Aldo Melchiori (786-7439)

Background: The Condominium Act creates a system of warranties of quality, both implied and express. A vendor or dealer impliedly warrants that the unit is "suitable for the ordinary uses of real estate of its type" and that any improvements to be made will be well constructed. If it is a residential unit, the vendor or dealer also impliedly warrants that its use is permitted by law. Implied warranties may be waived in writing, except that, in the case of a residential unit, any waiver must be specific as to the defect waived and must be "a part of the basis of the bargain." In addition to implied warranties by a vendor or dealer, any seller of a unit makes an express warranty of quality by any written statement relating to the condition of the unit or the legality of its use or by any model or written description that purports to show the unit's physical characteristics.

Under the act, any right or obligation is enforceable by judicial proceeding. In *Marina Cove Condominium Owners Ass'n v. Isabella Estates*, the Court of Appeals held that nothing in the act prevents parties from mediating or otherwise settling their disputes as they wish, but the act restricts the parties' ability to contractually foreclose enforcement by judicial proceeding.

Summary of Bill: Under the Condominium Act, implied warranties extend only to deviations that a reasonably informed buyer would consider significant enough that he or she would not purchase the unit until the deviation or defect was corrected. Defects or deviations that are discoverable through the purchaser's normal and prudent inspection are not covered by an implied warranty of quality. Implied warranties do not transfer to subsequent owners if they are replaced by expressed written warranties. A general disclaimer of implied

warranties of quality is effective if the seller replaces or modifies it with an express warranty in conformity with the act.

For residential units, when an express written warranty of quality is offered to replace implied warranties, the declaration for a condominium must clearly state so, the express warranty must be recorded with the declaration, and the unit purchaser must agree in a recorded written instrument. An express warranty approved by the VA or HUD is sufficient. Express warranties apply to claims brought by initial and subsequent purchasers, but not to the association.

Any right or obligation may be enforced by a judicial proceeding or by arbitration. Resale certificates provided by unit owners who are selling their interest must disclose the status of any legal proceedings in which the association is a plaintiff or defendant. An association, the board, and officers are not liable for failing to decide to initiate arbitration proceedings.

Unit owners must arbitrate under Chapter 7.06 RCW, which provides for mandatory arbitration of claims under \$15,000 and allows for trial de novo. In actions brought by an association or board of directors, arbitration may be used only after mediation fails. A claim, for breach of an implied warranty involving construction defects, by an association is under Chapter 7.04 RCW, which only allows appeals based on procedural errors. Disputes are heard by one arbitrator unless agreed otherwise. Arbitrators do not have to be lawyers, but must have experience in the subject. Washington law applies. A process to appoint arbitrators is provided. Discovery may be permitted, but may be limited for good cause to prevent delay or excessive costs. The hearing must be completed within one year of the initial demand for arbitration.

Appropriation: None.

Fiscal Note: Requested on February 11, 2003.

Effective Date: The bill takes effect July 1, 2003.

Testimony For: Affordable insurance for builders is very difficult to obtain, especially for builders constructing condominiums. Doing nothing will hurt low and moderate income home buyers because the high cost of insurance raises home prices or prevents their construction. Dense housing, required by the Growth Management Act, will become hard to obtain. Insurers need more certainty to restart the industry.

Testimony Against: The bill is not narrowly tailored to preserve the rights of consumers or to resolve the builders' insurance issues. Consumers are not experienced in negotiating contract provisions. People want to buy homes that comply with building codes, not ones that are merely habitable. Consumers need the current protections for the primary investment of their lives.

Testified: PRO: Ron Meyers, Condominium Alliance; Tony To, Condominium Alliance; Pete Middlebrooks, Condominium Alliance; Scott Hildebrand, Master Builder's Association; Suzanne Dale Estey, King County Executive Office. CONCERNS: Larry Shannon, WSTLA; Genesee Adkins, 1000 Friends of Washington. CON: Carl Wilson; David Merchant, Washington Homeowner's Coalition; Marion Morgenstern, Washington State

Community Associations Institute; Mo McBroom, Washington Public Interest Research Group.